

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-14414

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 19, 2008

Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on August 19, 2008.

ISSUE

Whether claimant has established disability for Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) January 3, 2008, claimant applied for MA and SDA.
- (2) January 29, 2008, the Medical Review Team (MRT) denied claimant's application. Department Exhibit A.

(3) January 30, 2008, the department sent claimant written notice that the application was denied. Department Exhibit C.

(4) February 6, 2008, the department receive claimant's timely request for hearing.

(5) April 16, 2008, the State Hearing Review Team (SHRT) denied claimant's application. Department Exhibit B.

(6) August 19, 2008, the telephone hearing was held. Prior to the close the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. March 25, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT decision, 3-25-09.

(7) Claimant asserts disability based on impairments caused by fibromyalgia, fatigue, depression, stomach removal, irritable bowel syndrome, poor memory and concentration, and bad back.

(8) Claimant testified at hearing. Claimant is 42 years old, 5'4" tall, and weighs 134 pounds. Claimant completed high school and an associates degree. She is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a newspaper circulation manager, shipping and receiving clerk, deputy clerk, and insurance estimator.

(10) May 26, 2006, claimant underwent objective cardiac testing and a report was prepared that indicates claimant has fitness classification of average to high; blood response to exercise was normal; no arrhythmias noticed; normal electrocardiographic response to exercise; and typical angina not provoked. Echocardiogram revealed chest pain with normal stress test,

doubt severe ASHD; doctor opines likelihood of severe ASHD is low. Claimant is able to engage in activities without restriction. Department Exhibit A, pgs 126-127.

(11) October 16, 2006, claimant underwent objective medical testing that revealed findings compatible with an approximately 3.5 CM paraesophageal hernia. Deformity of stomach which most likely represents post operative scar. Department Exhibit A, pg 3075.

(12) October 30, 2006, claimant was examined by her surgeon. Physical examination revealed mild discomfort in the subxiphoid region and substernal region chest pressure pain. Doctor opines that claimant has a significant recurrence of reflux symptoms in a patient who now has had two open laparotomies in her epigastria. Persistent vomiting may indicate stenosis related to her old gastroplasty or her wrap. Further testing is recommended. November 1, 2006, underwent endoscopy and a report was prepared that indicates the following: stenosis of vertical band, probably contributing to the majority of patient's symptoms; small paraesophageal herniation with suggestion of at least a partially intact wrap; rule out esophagitis; and rule out helicobacter pylori. Further testing was negative for the helicobacter pylori Department Exhibit A, pgs 2069, 2072-2073, 2093-2094. November 15, 2006, claimant visited her surgeon who recommended Savary dilation. Department Exhibit A, pg 2095. November 30, 2006, claimant underwent esophagogastroduodunocopy with Savary dilation through gastric band. Department Exhibit A, pg 2074. December 5, 2006, claimant underwent an upper GI exam that revealed malpositioning of the gastric cardia below the level of the proximal fundus; no evidence of leak at the gastric banding sight. Department Exhibit A, pgs 2062-2063. December 6, 2006, claimant visited her surgeon. Treatment notes indicate claimant's stenosis at the band is persistent. Department Exhibit A, pg 2096. December 15, 2006, claimant underwent removal of her gall bladder, partial removal of her stomach, and liver core biopsy. Claimant had no

complications of surgery and was discharged in satisfactory and improved condition on December 18, 2006. Department Exhibit A, pgs 2070-2071, 2078-2079. December 28, 2006, claimant underwent surgery to correct a small bowel obstruction. Department Exhibit A, pgs 2080-2083. January 25, 2007, claimant was examined by her surgeon. Claimant reports being intermittently symptomatic. Department Exhibit A, pg 2099. February 9, 2007, claimant underwent an upper GI with small bowel follow-through that revealed esophageal dysmotility; 2 cm well defined area of communication with bowel near the GE junction, this could represent a chronic contained leak, communication to prior access cavity or portion of the stomach which was previously excluded and now communicates with the rest of the proximal gastric pouch. No evidence of small obstruction. Department Exhibit A, pg 2068-2068A. February 15, 2007, claimant underwent balloon dilation of the anastomosis. Department Exhibit A, pgs 2084-2086. February 28, 2007, surgeon treatment notes indicate that claimant is making satisfactory progress. She is tolerating her lipids much better. She has much less nausea. She is tolerating planting of her J-tube. Department Exhibit A, pg 3000. March 7, 2007, claimant again underwent balloon dilation of the anastomosis. Department Exhibit A, pgs 3190-3191. March 27, 2007, claimant underwent surgery to remove her J-tube. Department Exhibit A, pg 2091. June 28, 2007, claimant was examined by her surgeon. Surgeon indicates claimant is now six months post-op. She reports feeling great and has more energy that she ever has. Bowel movements are adequate. She is using her liquid protein. Overall, she continues to make good progress. Department Exhibit A, pg 3001.

(13) January 8, 2007, claimant was examined by an arthritis specialist. A letter was prepared as well as treatment notes. In pertinent part, claimant is ANA positive on 10-14-02. On 10-11-04 ANA was negative. Doctor opines it is doubtful claimant has lupus or another

connective tissue disease. On July 23, 2007, treatment notes indicate that claimant's ANA was borderline negative. Doctor opines claimant does not have an arthritic illness. Department Exhibit A, pgs 100-103.

(14) January 7, 2008, claimant's physician completed a Medical Examination Report (DHS-49) following physical exam that same date. Doctor indicates diagnoses of GERD, degenerative disc disease of the neck and back, goiter, and fibromyalgia. Doctor indicates a normal physical exam with the exception of patient being cautious with position changes and lazy eye syndrome since childhood. Doctor indicates that patient reports being unable to work. Doctor does not provide an opinion regarding capabilities with the exception of complaints of pain compromise ability to work. Department Exhibit A, pgs 3083-3084.

(15) March 13, 2008, claimant underwent MRI of the lumbar spine. A report was prepared that indicates mild degenerative disc disease, degenerative osteoarthritis of the facet joints with associated minimal bulging of the disc seen of questionable significance; nerve root, sacral cyst; otherwise negative MRI of the lumbosacral spine. Department Exhibit A, pg 3287.

April 8, 2008, claimant was examined by a rheumatologist. Treatment notes indicate, in pertinent part; muscle strength is 5/5 for all groups tested; cervical range of motion shows normal flexion without pain, decreased extension with pain, decreased left rotation with pain, decreased right rotation with pain; elbows demonstrate no evidence of arthritic changes, swelling, or tenderness; hand examination unremarkable with full grip; shoulder exam shows no synovitis, effusion, or arthritic changes. Wrists demonstrate no evidence of synovitis or tenderness; ankle exam unremarkable; exam of both hips unremarkable; knee flexion without pain; cervical spine, sacrum, and lumbar spine shows placatory tenderness; musculoskeletal exam reveals no abnormal movement and no synovitis. Doctor opines that claimant has fibromyalgia and

recommends daily stretching exercise and low impact activity. Medications were prescribed. April 17, 2008, claimant underwent MRI of the cervical spine and a report was prepared that states bilateral thyroid nodules; degenerative disc disease; mild broad-based disc protrusion eccentric to the right and right neural foraminal stenosis at the C6-C7 level; mild focal left paracentral disc protrusion at the C6-C7 level that may represent disc herniation. Department Exhibit A, pg 2283.

(16) April 30, 2008, claimant underwent examination by a neurologist. A narrative report was prepared that indicates the following in pertinent part: patient has full active non painful range of motion in the shoulders, elbows, and wrists bilaterally without evidence of instability; no instability or pain noted with hip, knee, or ankle range of motion. Patient shows no weakness in heel and toe walking. Spine on inspection shows no abnormalities. Patient is tender wherever palpated to the cervical spine, midline and paraspinal regions, trapezoid region, mid thoracic spine to the lumbar spine midline. Trunk flexion causes her to feel dizzy, but does not increase pain, extension is limited. Active cervical spine range of motion is limited in all ranges with complaints of neck pain. Biceps, triceps, and brachioradialis are 2 to 3+ and symmetric ; Hoffman's is negative bilaterally; pectoral and scapulohumeral reflexes are negative; ankle and knee jerks are 3+ and symmetric; Plantars are downgoing; there is one to two beats of clonus bilaterally; seated straight leg raise is negative bilaterally; Spurling's is negative to the right and left bilaterally; upper extremity motor testing reveals some giveaway weakness and 4/5 weakness in the right finger extensors and 4/5 weakness in the left tricep, but otherwise intact strength; manual muscle testing in the lower extremities reveals intact strength; there is no dermatomal sensory changes in the upper extremities bilaterally. Lower extremities have global diminution of sensation in the entire left lower extremity as compared to the right. Department

Exhibit A, pgs 3003-3004. Claimant then underwent physical therapy for a number of weeks.

Department Exhibit A, pgs 3310-3321.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;

- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that claimant has degenerative disc disease and bulging discs in her cervical and lumbar spine. Claimant has pain to palpation throughout her back. Lumbar and cervical range of motion are reduced. Claimant has somewhat reduced 4/5 weakness in the right finger extensors and left tricep otherwise strength is intact in upper and lower extremities. Left lower extremity has global diminution of sensation compared to right. The objective medical evidence of record indicates that claimant has

a borderline ANA and her rheumatologist opines claimant does not have lupus or arthritic disease. During mid 2006, through early 2007, claimant suffered nausea, vomiting, and GERD. Objective testing revealed claimant had complications with her vertical banded gastroplasty. Claimant underwent a number of surgeries to dilate the vertical band. Surgeries were not successful and claimant underwent removal of a large portion of her stomach. In December 2006, she had a J-tube inserted through which she received nutrition. The tube was removed on or about March 27, 2007. In June 2007, claimant was feeling great and had more energy than ever. Bowel movements were adequate and she continued to make good progress. Doctor indicates claimant has fibromyalgia with tenderness throughout the back. Finding of Fact 10-16.

At Step 2, the objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment for 12 months or more. Accordingly, claimant is disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not meet or equal any Social Security Listing.

At Step 4, claimant's past relevant employment has been as a newspaper circulation manager, shipping and receiving clerk, deputy clerk, and insurance estimator. See discussion at Step 2 above. Finding of Fact 9-16.

At Step 4, the objective medical evidence of record is not sufficient to establish that claimant has severe physical impairments that prevent her from performing the duties of her past relevant employment. Accordingly, claimant is disqualified from receiving disability at Step 4.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the

national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, see discussion at Step 2 above. Finding of Fact 10-16.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least sedentary work duties. Considering claimant's Vocational Profile (younger individual, high school graduate or more, and history of unskilled work) and relying on Vocational Rule 201.27, claimant is not disabled.

Claimant does not meet the federal statutory requirements to qualify for disability. Therefore, claimant does not qualify for Medical Assistance based on disability and the department properly denied claimant's application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as

delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

After careful examination of the record and for reasons discussed at Steps 2-5 above, the Administrative Law Judge decides that claimant does not have severe impairments that prevent work for 90 days or more. Therefore, claimant does not qualify for SDA based on disability and the department properly denied her application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides claimant has not established disability for Medical Assistance and State Disability Assistance.

Accordingly, the department's action is, hereby, UPHELD.

/s/ _____
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2010

Date Mailed: July 28, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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JAB/db

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